

DIVISION IV

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN MAUZY PITTMAN, CHIEF JUDGE

CA05-977

August 30, 2006

FIRST ARKANSAS BAIL BONDS, INC.  
APPELLANT

APPEAL FROM THE CLARK COUNTY  
CIRCUIT COURT  
[NO. CV-05-21]

HON. JOHN A. THOMAS,  
JUDGE

V.

REMANDED TO TRIAL COURT TO  
SETTLE THE RECORD

STATE OF ARKANSAS

APPELLEE

This is an appeal from a bail bond forfeiture proceeding. Appellant bonding company argues that the trial court erred in ordering its bond to be forfeited because the bonding company was not immediately served with process in proper form. The State argues that the bonding company waived any defect in service by failing to raise the deficiency in an unrecorded hearing assertedly held on January 3, 2005. The bonding company counters that no waiver of the defect could have occurred because no responsive pleading was required.

Waiver is the voluntary relinquishment of a known right, and objections to the sufficiency of process can be waived. *Adams v. Nationsbank*, 74 Ark. App. 384, 49 S.W.3d 164 (2001). Although appellant may not have been required to file a responsive pleading, it has been held that any defects in process, the return thereon, or the service thereof are cured or waived by the appearance of the defendant without raising an objection, and he is precluded from thereafter taking advantage of the defect. *Burrell v. Arkansas Department of Human Services*, 41 Ark. App. 140, 850 S.W.2d 8 (1993).

We cannot determine whether service was waived at the January 3 hearing in the absence of any record thereof. Pursuant to Administrative Order No. 4, it was the trial court's duty to see that a verbatim record was made. Consequently, we remand this matter to the trial court to settle the record regarding the asserted unrecorded hearing. *See* Ark. R. App. P. – Civ. 6. Once the record has been settled and filed with our Clerk, the Clerk will set a new briefing schedule for substitution of the abstract and briefs previously filed. *See Gaines v. State*, 338 Ark. 503, 994 S.W.2d 938 (1999).

Remanded to trial court to settle the record.

GLADWIN and GLOVER, JJ., agree.